



STATE OF INDIANA

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October 29, 2012

Alan R. Hatfield
209 N. Lamport St.
Osceola, Indiana 46501

Re: Formal Complaint 12-FC-288; Alleged Violation of the Open Door Law by the Town of Osceola

Dear Mr. Hatfield:

This advisory opinion is in response to your formal complaint alleging the Town of Osceola ("Town") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Denise Thornburg, Clerk-Treasurer, and Jim Loney, Council President, responded on behalf of the Town. Their response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege the Town violated the ODL by eliminating the custodian's position at the Town Hall without taking action on the issue at a public meeting.

In response to your formal complaint, the Ms. Thornburg and Mr. Loney advised that the custodian's position was eliminated by vote of the Town Council at the properly noticed September 5, 2012 public meeting. A copy of the agenda and minutes from the September 5, 2012 public meeting is enclosed for your reference.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations,

establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). While the ODL requires that all final action must be taken at a meeting open to the public, the law does not provide instruction as to what actions of a governing body require a meeting and/or vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-114.*

Here, you have alleged that the Town failed to take action on the elimination of the custodian’s position at an open public meeting. In response, Ms. Thornburg and Mr. Loney provided copies of the agenda and minutes from the September 5, 2012 meeting where the Town voted to eliminate the position. The minutes provide that at the September 5, 2012 Town meeting, Council Member Doug Beals made a motion, which was seconded by Council Members Schrock, to terminate the custodial position. The minutes further indicate that the motion carried. In support of your formal complaint, you included correspondence from Ms. Barbara Klein who stated that no member of the Town Council said a word regarding the elimination of the custodian’s position at the September 5, 2012 meeting. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80.* As such, it is my opinion that as long as the Town took final action on the elimination of the custodian’s position in an open, public meeting, it did not violate the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that as long as the Town took final action on the elimination of the custodian’s position in an open, public meeting, then it did not violate the ODL.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Denese Thornburg, Jim Loney